Supreme Court, U.S.
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NO. _____

In The
Supreme Court of the United States

GRETA K. POSTMA,

Petitioner,

VS.

THE CITY OF ORANGE CITY, IOWA,

Respondent.

On Petition For a Writ of Certiorari
to the Supreme Court of Iowa

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether there has been:

1) a violation of the guarantee of the First Amendment (Petition to Redress Grievances);

2) a denial Equal Protection under the Fourteenth Amendment, and

3) a denial of Due Process of Law under the Fourteenth Amendment of the United States Constitutions;

when appellate courts dismiss appeals for alleged noncompliance with rules of appellate procedure:

A) after briefs have been screened and found to be in compliance;

B) there is no sanction provided by rule for this type of alleged noncompliance, nor precedent in case law for a sanction;

C) the intermediate appellate court has no statutory authority to dismiss;

D) other appellate cases are routinely decided on the merits when there has been substantial compliance;

E) standard practice is to issue a letter of deficiency and grant an opportunity to conform;

F) in a later decision the court of appeals not only ruled on the merits **but in her favor,** and

G) there has been a policy of denying an appellant access to the courts (state and federal) on any level.

PARTIES TO THE PROCEEDING

The caption of the case contains the names of all the parties.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Greta K. Postma respectfully petitions this Court to issue a *writ of certiorari* to review:

1) the judgment of dismissal of the Court of Appeals of the State of Iowa filed on March 13, 2002, and the denial of further review by the Supreme Court of Iowa filed on May 24, 2002, (App. 26), and

2) the judgment 'Ruling Vacated' issued on May 15, 2002, and the denial of further review by the Supreme Court of Iowa filed on August 2, 2002. (App. 29).

OPINIONS BELOW

The opinions of the Court of Appeals of Iowa are unpublished and were filed on March 13, 2002, (App. 26) and May 15, 2002, (App. 29) respectively. The denials of further review by the Supreme Court of Iowa are unpublished and were filed on May 24, 2002, (App. 28) and August 2, 2002 (App. 32), respectively.

STATEMENT OF JURISDICTION

The judgments of the Court of Appeals of the State of Iowa were entered on March 13, 2002, and May 15, 2002, respectively and

denials of timely applications for further review by the Supreme Court of Iowa were issued on May 24, 2002, and August 2, 2002, respectively. On August 13, 2002, the Hon. Clarence Thomas extended the time for filing a writ of certiorari to and including October 21, 2002. (Application No. 02A117). Thus, this combined petition for writ of certiorari is within the ninety (90) day time limit as extended by the court.

The jurisdiction of the court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS, STATUTES AND APPELLATE RULES INVOLVED

The following Amendments to the United States Constitution are involved. They state as follows:

FIRST AMENDMENT

Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or the press, or of the right of the people peaceably to assembly, and to petition the government for a redress of grievances.

FOURTEENTH AMENDMENT

(1) All persons born . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The following statutes from the Code of Iowa are involved in this case. They currently state:

602.4201(1) The supreme court may prescribe all rules of pleading, practice, evidence, and procedure, and the forms of process, writs, and notices, for **all proceedings in all courts of this state,** for the purposes of simplifying the proceedings and promoting the speedy determination of litigation **on the merits.** [Emphasis added]

602.5106(1) The court of appeals **may affirm, modify, vacate, set aside or reverse** any judgment, order, or decree of the district court or other tribunal which is under the jurisdiction of the court, and may remand the cause an direct the entry of an appropriate judgment, order, or decree, or require further proceedings to be had as is just. If the judges are equally divided on the ultimate decision, the judgment, order, or decree shall be affirmed. [Emphasis added]

602.5107 The court of appeals, subject to the approval of the supreme court, may prescribe rules for the conduct of business of the court of appeals. **Rules prescribed shall not abridge, enlarge, or modify a substantive right.** [Emphasis added]

The following portions of the Iowa Rules of Appellate Procedure are involved in this case. They currently state:

Iowa Rule of Appellate Procedure 6.14. **Briefs.**

1. *Appellant's brief.* The brief of appellant shall contain under appropriate headings and in the following order:

(c) A statement of the issues presented for review. . . **Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.**

(e) An argument. The argument may be preceded by a summary. The argument shall contain in separately numbered divisions corresponding to the separately stated issues the contentions of appellant with respect to the issues presented and the reasons therefore, with citations to the authorities relied on and to the pertinent parts of the record in accordance with subdivision 7. **Each of the arguments shall begin with a discussion, citing relevant authority, concerning the scope or standard of appellate review (e.g., "on error," "abuse of discretion," "de novo") and shall state how the issue was preserved for review,** with references to the places in the record where the issue was raised and decided.

2. *Appellee's brief.* The brief of the appellee . . . Each division of **appellee's argument shall begin with a discussion of whether appellee agrees with appellant's statements regarding the scope of review and preservation of error.** [Emphasis added]

Iowa Rule of Appellate Procedure 6.15(2):

Designation of contents [of Appendix to Briefs]. The parties are encouraged to agree on the contents of the appendix. Designation of parts of the district court record to be included in the appendix shall be served and filed by each party at the time the proof copy of required briefs, other than appellant's (cross-appellee's) reply brief, are served and filed, except that an appellee need not designate additional parts if appellee is satisfied with appellant's designation. Appellant shall file in the appendix the parts included by appellee. **In designating parts of the record for inclusion in the appendix, the parties shall consider the fact that the entire record is available to the appellate courts for examination and shall not engage in unnecessary designation.** [Emphasis added]

STATEMENT OF FACTS

The Court of Appeals and the Supreme Court of the State of Iowa are denying all access to the courts of the State of Iowa by creating rules and sanctions and applying them retroactively and unequally against this Petitioner, Greta K. Postma, in order to deprive her of her property and right of free press (publication of documents in the windows of a building), without due process of

law and just compensation. The Court of Appeals has dismissed three appeals of this appellant, but ruled not only on the merits, **but in her favor on a fourth appeal even though the same alleged noncompliance with the rules existed in that fourth appeal,** thus demonstrating the arbitrariness, injustice and inconsistency of their application of the (newly created) sanctions of dismissal which they had just imposed three times! In that fourth appeal they vacated a ruling on a Motion To Reconsider which ruling was entered after the appeal was filed, but noted that the dismissal of the previous appeal still stands and this appellant has not been able to obtain a hearing or ruling on the Motion To Reconsider in the lower district court. Further, they have denied the Petitioner the right to amend her briefs and bring them into full compliance with the Iowa Rules of Appellate Procedure, an opportunity regularly granted when the screening process discovers deficiencies. No letters of deficiency were issued to this appellant because in all of the appeals the briefs had cleared the screening process!

NOTE: The first two appeals are not presently before this court, but this Petitioner will seek permission of this court to file a Petition For Writ of Mandamus and Prohibition concerning those appeals which are unpublished as *City of Orange City, Iowa vs. Lot 10 and the East 10 Feet of Lot9 . . . Greta K. Postma, Owner, No. 98-1389 and 99-1565.*

A) Background facts and litigation

The original action against Greta, the Petitioner, was for alleged safety violation as the result of the condition of an historical building located in Orange City, Iowa, known as the Cambier

Building. (App. 73). This building is a large building (9,000 square feet) located in downtown Orange City, Iowa, which was designed (by architect) to be a car showroom and garage just when most persons were purchasing their first automobile. It has a full basement accessible by a car elevator and has fifteen-foot ceilings. Because of the large showroom windows which are on the sixty (60) feet of south frontage and which radiate light onto a stone tile floor that was imported from Germany in 1919, Robert H. Schuller, the televangelist who broadcasts from the Crystal Cathedral and who grew up in the area, refers to this as the 'building of light.'

Greta had attempted to develop and rehabilitate the building, but certain local officials and individuals had blocked her by defrauding the United States government in a bidding process thus depriving her of a prospective tenant and then refused to process applications for building permits and for "Dutch Front" money. (App. 74, 75). Since she is an award winning artist she submitted her own design (App. 75) after the City interfered with he use of 'their architect' and ignored the design of Beuttler's firm, but they still refused to process any application. She filed suit against them in federal court but was denied the right to proceed *pro se* by the Hon. Mark E. Bennett. See *Postma v. Orange City*, 92 F.3d 1189 (8TH Cir. 1996).

In 1996 they served Greta with a complaint purportedly from the state fire marshal to the city attorney which outlined purported deficiencies, but Greta obtained the original report dated a couple weeks earlier (December 7, 1995) stating that the "if the chimneys were repaired the building is in

overall sound construction." (App. 72). It was a precursor of the attorney's fraudulent actions.

The City of Orange City, Iowa, then complained in 1997 about the condition of the building and Greta responded to their concerns, (App. 71) and in exchange the City promised to issue a building permit (App. 76), but after the annual Tulip Festival the City reneged on its agreement. The City of Orange City, Iowa, then passed an ordinance *Ex Post Facto* making their "concerns" quasi-criminal violations and providing for civil citations to be filed which they promptly did without further complaint to Greta. For more details see Greta's Affidavit and the Affidavit of her last tenant. (App. 66-79).

In the first two appeals this Petitioner vigorously asserted that the courts of Iowa have no jurisdiction over her as a nonresident because they had not published notice of the Original Notice (Iowa's version of a summons) but then served her only by certified mail. Thus they had not acquired jurisdiction over her property in Orange City, Iowa, or her individually, as a resident of Clara City, Minnesota. She further asserted that this was a taking, without Due Process of Law and without Just Compensation for **private** purposes to 1) benefit a group of private investors who wanted to acquire and develop the property, and 2) to illegally end her publication of documents posted on the inside of the tall showroom windows of this building since they contain information concerning corruption and fraud by government officials as well as private individuals.

Also, the Motion to Dismiss (App. 82) (which Greta filed in federal district court of Minnesota upon removal to that court) has not been heard or

ruled on (App. 80) by the state court although specifically remanded ("all pending motions") by Judge Donald Alsop. (App. 83). This Motion to Dismiss also asserts *res judicata* and *Ex Post Facto* defenses. And the Iowa district court's actions and judgments are void because they placed Greta in default despite the Motion To Dismiss and ordered a hearing.

She filed a second removal to the federal district court in Northern Iowa and although she filed a Notice of Removal in the state court a half hour before the "hearing" they ignored it and went ahead anyway! Thereafter, all proceedings in the original action occurred *Ex Parte* and without any further service of notice or process on her! Note that Greta believes that the second notice of removal was timely because it related back to the first and that the thirty day time for removal was properly tolled, but without a hearing or considering the issues of relation back and tolling, the Hon. Mark E. Bennett remanded the case back to state court about a month after the "hearing" on the basis that it had been removed after the thirty (30) day time frame allowed for removals.

The third and fourth appeals (which are the subject of this Petition) arise from the dismissal of an Independent Action in Equity which Greta filed in order to vacate the void, *Ex Parte* orders and judgment placed against her. After virtually no defense or justification was shown for its conduct and the City of Orange City, Iowa, failed to appear for two pretrial conferences the trial was continued at the request of the City and another pretrial conference was set and Greta was required to attend in person. She did so and filed all of the required matters as well as motions to amend her

petition. The City appeared but filed none of the required items. The City refused all discovery attempts and refused to provide public records which had previously been ordered by the court at a hearing on August 28, 2000, the state court concluded, contrary to law and all precedent, that this action (which is allowed in the same manner as an independent action under Rule 60(b) in federal courts) is a collateral rather than a direct attack and dismissed her action. For more details see the Amended Appellant's Brief. (App. 32).

When Greta filed a motion to reconsider with a substantial brief, the court did not respond and so Greta filed a Notice of Appeal before the expiration of the time for doing so, since the motion to reconsider did not suspend or extend the time for filing an appeal. Several days after the Notice of Appeal was filed the trial court filed an order overruling the Motion To Reconsider and adding that the matter was dismissed because the petition was defective even though the court had only recently allowed it to be amended. It was in fact sufficient to attack a void, *Ex Parte* judgment; such judgments are not judgments at all and require no pleading but can be attacked orally, *sua sponte,* etc. The trial court's ruling on the Motion To Reconsider has now been vacated by the Iowa Court of Appeals for the reason that the court no longer had jurisdiction. (App. 29).

None of the other issues were reached or considered by the court of appeals and the Supreme Court of Iowa; in fact they deliberately avoided them in order to not expose the egregiousness of the actions of those involved on the state district court level. Greta believes that they are also seeking to prevent the dissemination

of the information contained in the documents posted in the showroom windows of the building. But, since these issues were never decided on the merits, they cannot directly be the subject of this Petition; they will be the subject of the application for permission to file a Petition For Writ of Mandamus and Prohibition which will be presented to this court in the near future if not already on file when this is being read and considered.

B) Appellate Court History

Although Greta filed her first Notice of Appeal in July, 1998, no decision was made until January, 2002, on the first appeal and then it was dismissed. This is partially because she repeatedly sought to have the Supreme Court of Iowa issue a stay, writ of mandamus, writ of certiorari or some other method that would allow her to have access to the district court since they would not even allow her to file a bond nor a hearing (which is mandatory) on the amount and sufficiency of her proposed bond in order to prevent a sheriffs' sale. This was all to no avail since the Supreme Court of Iowa refused all of her requests.

Greta also attempted to file bankruptcy in order to stop the sale when the courts refused to allow her to file a bond but the City of Orange City, Iowa, hired a high-powered law firm in Minneapolis, MN, in order to force her out of the protection of bankruptcy court.

Greta had also hired and retained an attorney who was supposed to have filed these briefs on her behalf, but after several months and nothing being done, except that he failed to show up for and failed to notify her of a hearing by which the City

also obtained another *Ex Parte* order for possession of the building. This order is under attack, but after two and one half years this has not been set for trial even though the rule says that it must be set for trial not less than twenty (20) days afterwards by the court administrator. After firing him, Greta filed her own briefs and these were apparently screened by the staff at the Clerk of the Supreme Court and found to be acceptable (App. 39).

On February 6, 2002, the Iowa Supreme Court refused to allow a consolidation of these last two appeals (App. 54) stating that one had been transferred to the Iowa Court of Appeals and the other had not, but if it were in the same court later she could renew her motion. Although she later renewed this motion on May 23, 2002, when both cases were before the Iowa Supreme Court on Applications For Further Review the Iowa Supreme Court summarily denied it the same day! (App. 53).

On March 13, 2002, the Iowa Court of Appeals issued its Per Curiam opinion 'APPEAL DISMISSED" in No. 00-1744 citing its two previous dismissals of Greta's first two appeals. **None of these opinions cited any case in which there had been a dismissal, nor any rule which provided a sanction of dismissal** for the specific deficiency which the court now "discovered" long after they had passed the initial screening. (App. 64).

Although the record in the district court is replete with instances where Greta had requested relief from the repeated denials of due process and access to the courts and had raised these issues on appeal, (App. 64-70, 80) the issues concerning a denial of due process and access to the courts in

connection with the merits of this appeal (and which are the subject of this Petition) now arose for the first time and Greta promptly brought them to the attention of the Supreme Court by filing an Application for Further Review. (App. 55). The Iowa Supreme Court denied this on May 24, 2002, even though Greta had filed an Amended Appellant's Brief to prove her willingness to fully comply with the rules. (App. 32). The Court also summarily had denied her Motion to Amend (App. 28) the same day she filed it even though it only added a dozen or so lines to a fairly substantial brief that had already passed the initial screening process for technical defects. The added lines are in brackets in order to distinguish them from the original content of the brief.

On May 15, 2002, in the last appeal, No 00-1935, the Iowa Court of Appeals ruled in favor of this Petitioner ('RULING VACATED') (App. 29) even though she had filed only a six page brief that cited only a few cases. In this brief she made no reference to the scope of review or the preservation of error; these were the deficiencies cited in dismissing her other appeals. This decision is wholly and completely inconsistent with the prior opinions in Greta's cases, but is consistent with the current practice and application of the rules in Iowa appellate courts. Apparently the newly created sanction of dismissal no longer existed!

Because of this inconsistency and further, in order to possibly avoid having to seek relief in this, the Supreme Court of the United States, this Petitioner filed an Application For Further Review of this latter decision, partly because it did not decide all of the issues, and requested the Iowa Supreme Court to once again protect her rights to

get a hearing on the Motion To Reconsider and on any future matters which she might bring to the Iowa courts but this was denied on August 2, 2002. (App. 32).

FEDERAL QUESTIONS RAISED IN RECORD

As stated above, the Petitioner raised the issues she now presents to this court at her first opportunity to do so, which was in the Application For Further Review (App. 55) filed on April 4, 2002, particularly see pages on pages 34, 35, 37, and 38, thereof as follows:

FOURTEENTH AMENDMENT:

> "By exceeding its powers and authority in each of these four ways the court of appeals has violated the Appellant's right to Due Process guaranteed by the Fourteenth Amendment. *Hicks v. Oklahoma,* 447 U.S. 343, 346, 100 S.Ct. 2227, 2229, 65 L. Ed 2d 175 (1979); *Thompson v. Missouri Board of Parole,* 929 F.2d 396 (8th Cir. 1991), see footnote 10 on page 401, where the Eight Circuit Court of Appeals cites *Hicks,* supra, for the proposition "a state's failure to abide by its own laws that results in a deprivation of liberty constitutes a violation of due process clause of the Fourteenth Amendment." (App. 34-35).

FIRST AMENDMENT:

> "IV. FINALLY, THE COURT OF APPEALS HAS ERRED BY FAILING TO PROTECT AND PRESERVE THE APPELLANT'S CONSTITUTIONAL FIRST AMENDMENT RIGHTS OF ACCESS TO THE COURTS WHICH HAVE BEEN AND CONTINUE TO BE WHOLLY DENIED BY THE DISTRICT COURT
>
> This appellant has repeatedly and consistently been denied access to the courts in the Third Judicial District . . .
>
> As a result it has been difficult, if altogether impossible to make and preserve a record and issues for appeal. Every order and judgment signed and entered by the lower court during 1997 and 1998 was obtained Ex Parte and fraudulently by Veldhuizen on behalf of the Appellee and the persons who intend to profit from this corruption. Thus, the filing of the Appeal has sometimes been the only method stating 'how the issue was preserved for review.' The Notice of Appeal needs no 'discussion, citing relevant authority' when it has been the only method of making a record. "

The above omits more material from the appendix concerning the district court actions and denials, but then continues:

> "The right of access to the courts is contained in the 'petition for redress of

grievances' clause of the First Amendment, United States Constitution. As a First Amendment right it is of paramount importance and should have been considered by the Court of Appeals in analyzing and protecting this appeal."

"The Court of Appeals erred by failing to consider and apply 1) the denial of the First Amendment right of access to the district court, and 2) protect the Appellant's right of access to the appellate courts of the State of Iowa. The decision should be vacated and set aside and the Supreme Court should proceed to enter an appropriate determination of this appeal, and **any further proceedings in the Iowa district courts should be held in a location other than the Third Judicial District."**

FINAL ANALYSIS, ARGUMENT AND CONCLUSION

"The Court of Appeals had no authority or power to render its decision 'Appeal Dismissed' but did have the authority and power to "require further proceedings to be had as is just." Section 602.5106(1). The Court of Appeals, if it still found inadequacies after considering and applying the First Amendment right of access to the courts on behalf of Greta, should have entered on order requiting her to recast the briefs in accordance with the rules, etc. and providing a specific, prompt time for her to do so. This is already the standard method of handling deficiencies which have been detected upon review by the

staff at the offices of the Clerk of the Supreme Court, which presumably found none in this brief since no 'letter of deficiency' was issued.

"However, the undersigned urges the court to examine the record to at least determine that her rights of access to the courts have been violated, by the Court of Appeals as well as by the district court in Sioux County, Iowa. Upon reversal as prayed for this appellant requests the court to issue an order that all pending and further proceedings in this matter which are contained, pending or contemplated by either party or of record in the district court of Sioux County, Iowa, have jurisdiction and venue only in the District Court in Polk County, Iowa." (App. 35-38).

The Iowa Supreme Court did not directly address these issues but issued a one-page order denying further review on May 24, 2002. (App. 3).

REASONS FOR GRANTING THE WRIT

I. INTRODUCTION: A State Court Has Decided An Important Question of Federal Law That Has Not, Been Should Be Settled By This Court; The Decision Rendered By the Iowa Court of Appeals Is In Conflict With Relevant Decisions of the United States Supreme Court

This Court has rendered numerous decisions over the years which interpret and apply the First and Fourteenth Amendment for the trial courts of this nation; there are very few which address

their guarantees and rights when applied to the appellate courts and those generally address the right to counsel, law libraries and transcripts in criminal cases. The closest case in which the court has addressed procedural issues on appeal is in *Evitts v. Lucey*, 469 U.S. 387 (1985), wherein the court addressed the dismissal of a criminal appeal because of the failure of court appointed counsel in a criminal appeal to comply with an appellate rule. At page 399, the court stated, "If instead a state court chooses to dismiss an appeal . . . it may do so **if such action does not intrude upon the client's due process rights.**" [Empahsis added]

This case presents an opportunity to address those issues in a civil case where access to the appellate courts have been denied under the First Amendment as well as the guarantees of Due Process and Equal Protection being violated. The court of appeals of Iowa created a new sanction of dismissal without notice and beyond its powers to do so.

Under §602.5106(1) of the Code of Iowa the court of appeals does not have the power to dismiss cases and the only sanction set forth in the rules or the case law is for failure "to state, to argue or to cite authority in support of an issue may be deemed a waiver of that issue." This is the holding of the decisions cited by the Court of Appeals in support of its decision in the first of the two appeals which are the subject of this Petition; even in those cases the appellate court generally made decisions on most of the issues if there had been any attempt to argue and support the issue.

The Supreme Court of Iowa could have dismissed this case if it did not pass the initial screening and this Petitioner refused to comply

with a letter of deficiency, but it had passed that screening (App. 64). After referring it to the Court of Appeals they only had the power to "affirm, modify, vacate, set aside or reverse . . . " This confirms the fact that these briefs had been approved in the screening process or they would not have been referred to the Court of Appeals. Further confirmation of the satisfactoriness of the briefs (other than a cursory perusal of them and the authorities cited - App. 33) is the fact that they Court of Appeals ruled in Greta's favor in the latter appeal where she had filed only a six page brief and only a couple authorities! That inconsistency makes this the perfect case to address these issues.

Further evidence of their intent to skirt their own rules is the statement in the opinion of dismissal that 'Postma has provided this court with a mere eighteen-page appendix" whereas their own rule states that "the parties shall consider the fact that the entire record is available to the appellate courts for examination and shall not engage in unnecessary designation[for inclusion in the appendix]." Iowa R. App. Proc. 6.15(2)

The rulemaking power for the Iowa courts is vested solely in the supreme court by §602.4201(1) and the court of appeals cannot create a new rule by a decision in this or any other case when the legislature has not given them the power to do so. Furthermore the initial screening or review by the clerk which approved the form of these briefs created a 'law of the case' which the court of appeals was bound to honor as a procedurally protected right of due process, particularly where a letter of deficiency would have remedied this matter much earlier. Note that the letter of

deficiency is the practice in this, the Supreme Court of the United States. Rule 14.5

The limited rulemaking authority granted in §602.5107 is solely for "the conduct of business of the court" and states that "[r]ules prescribed shall not abridge, enlarge, or modify a substantive right." This new 'rule' violates the right to access to the courts guaranteed by the First Amendment.

The real problem that the Court of Appeals faced is that the Respondent did not file a brief in one of the earlier appeals and the briefs that were filed were only three pages with a couple of citations. None of those briefs contained a single reference to the scope of review, etc., and they assessed the penalty for that against the Petitioner rather than the Respondent.

II. THE DECISION OF THE IOWA COURT OF APPEALS AND THE DENIAL OF FURTHER REVIEW BY THE IOWA SUPREME COURT IS IN CONFLICT WITH THE DECISION OF THE PENNSYLVANIA SUPREME COURT

In *Commonwealth v. Gambral,* 561 A. 2d 710 (Pa 1989) the Supreme Court of Pennsylvania determined that the sanction of dismissal was not appropriate; instead the issuance of a letter of deficiency is the appropriate method of dealing with such problems. That does not mean that another state is not free to put in place a different rule, but where the standard practice has been to issue a letter of deficiency, the failure of a state to follow its own rules and procedures is a violation of this Petitioner's rights to Due Process guaranteed by the Fourteenth Amendment. *Hicks v. Oklahoma,* 447 U.S. 343, 346 (1979); *Thompson v*

Missouri Board of Parole, 929 F. 2d 396 (8th Cir.1991). See footnote 10, p. 401.

III. THE DECISION OF DISMISSAL DECIDES IMPORTANT QUESTIONS OF FEDERAL LAW IN A WAY THAT DIRECTLY CONFLICTS WITH DECISIONS OF THIS COURT

By not reaching the issues in this case, but instead dismissing it the court avoids the First Amendment Free Press arguments and effectually bans the publication of them contrary to *Near v. Minnesota*, 283 U.S. 697 (1931) as well as a long list of cases (cited in the earlier appeals (also dismissed)) which prohibit takings of property without due process and just compensation.

All of the documents published in those windows (and which would have been published) relate to corruption in connection with governmental officials and certain individuals and corporations who profit and benefit therefrom. Initially, the husband of the Petitioner (who is also the former county attorney of Sioux County wherein Orange City, Iowa) came across information that the local sheriff and other law enforcement officers were engaged in theft of livestock and machinery which commenced when farmers abandoned farms in the 1980's. In pursuing this he acquired further information and combined with his own knowledge and experience during the pendency of this appeal has assisted attorneys in acquiring the documentation for the $7 million of missing moneys from the Morken 'Cattle Adventure' (see *U.S. v. Morken*, 133 F. 3d 628 (8th Cir. 1998) which had originated in Sioux County, Iowa, the most Republican-voting (87%) in the

nation. The money had been laundered through the banking accounts of the boyhood neighbors of Postma' s husband's family farm near Sheldon, Iowa. Banks were defrauded of an estimated $70 million more in this scheme.

In the process of attempting to circulate a petition for a reaudit of the sheriff of Sioux County, Iowa, (this is the Y2k sheriff who was quoted internationally as well as in *Harper's* and the *Wall Street Journal)* as predicting that the advent of the year 2000 was going to bring about a crash of all computers as part of "God's judgment on us for the things we have done"), Greta's husband was chased down and mercilessly beaten and choked on the main street of Le Mars, Iowa, in front of the magistrate's office by a dozen law enforcement officers. No reaudit was ever conducted but much evidence of his corruption surfaced later as well as in the public records of the local courthouse that bribes were being paid to the sheriff through the court system as 'restitution.'

The Iowa courts refused to allow Greta's husband to assert his defense of First Amendment - Petition To Redress Grievances and refused to allow him to show that after the incident his driving records had been illegally altered. Just prior to the incident the Department of Transportation teletyped a message that he had privileges to drive issued in Iowa and another state, but a few weeks after the incident the officers produced certified copies of records which purported to show that he had no driving privileges.

A large number of the cattle involved in the 'Cattle Adventure' scheme were in the feedlots of Wythe Willie, a Cedar Rapids, Iowa, lawyer who is

the former chief of staff of Senator Charles Grassley the chairman of the subcommittee overseeing the FBI and he recently assumed the position of president of the National Cattlemen's Association.

Many more cattle frauds have surfaced including last year's George Young $200 million fraud. Young was based in Kansas City, Missouri, but only after moving from southern Iowa where many of the cattle were still on feed and his and others' frauds are clogging the bankruptcy courts and federal district courts with litigation over ownership and priorities of liens and covers an area from Wisconsin to Arizona and Washington to Alabama. Several 'experts' have told Greta's husband that he knows more than anyone that they have talked to about this problem, but the FBI refuses to take action until it is too late and then is at a loss to tell what is going on. They have also refused to protect Greta's husband, but 'work regularly' with the local Y2k sheriff who still maintains a 300 man 'private army' in case the federals try to take over.

Since Orange City, Iowa, is part of a single party political system where everyone is expected to fall into step and make it appear that everyone works hard (in the Reformed Calvinistic tradition) and never does anything other than to go to church and (literally) wash their steps every day, it is a shock when evidence of corruption surfaces; but, they do and have done everything to cover it up! They recently voted overwhelmingly in the primary for the son-in-law of the cattleman who laundered the $7 million to be the Republican candidate for governor. He had been recruited to be the candidate for governor by former governor Terry Branstad who has plowed up his family farm and

made it a cattle feedlot and regularly refers investors to these schemes as well as being a regular visitor to Sioux County, Iowa. When the information about the $7 million surfaced last December Branstad suddenly recruited his former chief of staff to run instead, and he finally won the primary in June, but is now far behind in the polls because of his involvement as a lawyer lobbyist on behalf of the livestock industry which has built large confinements in Iowa while its own farmers went broke and lost their farms, particularly if they were feeding cattle.

Meanwhile the most recent financial statements filed by Grassley show that he has agricultural interests of almost $2 million while 20 years ago it was only $200,000.

Congressman Jim Leach, also of Iowa, is the chairman of House Banking Committee but has done nothing to amend the laws to prevent this activity even though several banks become insolvent or lose millions each year because of this. His financial statements show that he and his wife have a $5 to $7 million dollar interest in Foxley Cattle Company of Omaha, Nebraska.

If they are not profiting from these schemes why have they not used their power and positions to protect and serve by preventing them from happening?

This is exactly why the Founding Fathers adopted the First Amendment guarantees of Free Speech and Free Press, but without Due Process and access to the court system on this appeal and further proceedings in state court which are not being assigned for trial, the 'building of light' is boarded up and dark (also deteriorating) in Orange City, Iowa, which claims to be the 'City of Lights.'

Unless the court grants this Petition not only will Greta's substantial investment of over $150,000 be almost certainly lost, but those who perpetrate these crimes will be empowered.

CONCLUSION

For all of the foregoing reasons the Court should grant the Writ of Certiorari and ensure that the First Amendment rights of Free Press, Petition To Redress Grievances, Due Process and Equal Protection are not further violated

Respectfully Submitted,

Greta K. Postma
P.O. 531
Clara City, MN 56222
320 847-2194

Pro Se Petitioner

IN THE COURT OF APPEALS OF IOWA
No. 1-1001 / 00-1744
Filed March 13, 2002

GRETA K. POSTMA,
Plaintiff-Appellant.

vs.

CITY OF ORANGE CITY, IOWA,
Defendant-Appellee.

Appeal from the Iowa District Court for Sioux County, Dewie J. Gaul, Judge.

Plaintiff appeals from various rulings on an action she filed in Polk County seeking to vacate judgment entered against her in Sioux County. **APPEAL DISMISSED.**

Greta K. Postma, Clara City, Minnesota, pro se.

Loren J. Veldhuizen, Alton, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ. Huitink, J. takes no part.

PER CURIAM.

Greta K. Postma filed an action in Polk County seeking to vacate judgment against her in Sioux County. The district court ordered venue changed to Sioux County. Postma appeals, alleging numerous errors by the district courts of both counties. We have previously dismissed Postma's appeals in two other cases arising from the same

facts because of her failure to comply with the Iowa Rules of Appellate Procedure. We do so again here.

Failure to adhere to the rules of appellate procedure can lead to summary disposition of an appeal. *Myers v. Sellers,* 234 N.W. 2d 152, 154 (Iowa 1975). Dismissal of an action is appropriate when a party's failure to comply with the rules requires the court to undertake the research and advocacy, thereby assuming a partisan role. *Ingraham v. Dairyland Mut. Ins. Co.,* 215 N.W. 2d 239, 240 (Iowa 1974).

We find Postma has failed to comply with Iowa Rule of Appellate Procedure 6.14 (1)(e) formerly Rule 14 (a)(5), which requires that each argument contain a discussion concerning the scope of appellate review with citation to relevant authority. Additionally, Rule 6.14 (1)(e) requires the appellant to state how the issue was preserved for review with references to the places in the record the issue was raised and decided. Postma's brief does not meet any of these requirements. Postma has provided this court with a mere eighteen page appendix in contrast to the voluminous district court file. As a result, we have been put in the position of having to search through documents to do Postma's job. Engaging in this research and analyses would be advocating in favor of Postma. We may not do so. Pursuing an appeal without the aid of a lawyer does not excuse on from following the rules of appellate procedure. *In Re Estate of De Tar,* 572 N.W. 2d 178, 180 (Iowa Ct. App. 1997). Therefore we dismiss the appeal.

APPEAL DISMISSED.

IN THE SUPREME COURT OF IOWA
No. 00-1744
Sioux County No. EQCV019287

ORDER

FILED May 24, 2002

GRETA K. POSTMA,
Plaintiff-Appellant,

vs.

THE CITY OF ORANGE CITY, IOWA,
Defendant-Appellee.

After consideration by this court en banc, Streit, J., not participating, further review of the above captioned case is denied.

Dated this 24th day of May, 2002.

THE SUPREME COURT OF IOWA

By s/ Louis A. Lavorato, Chief Justice

IN THE COURT OF APPEALS OF IOWA

No. 2-231 / 00-1935
Filed May 15, 2002

Greta K. Postma,
Plaintiff-Appellant,

v.

City of Orange City, Ia,
Defendant-Appellee.

Appeal from the Iowa District Court for Sioux County, Dewie J. Gaul, Judge.

Greta K. Postma appeals the district court decision on a motion to reconsider, dismissing her petition to overturn a previous judgment. **RULING VACATED.**

Greta K. Postma, Clara City, Minnesota, pro se.

Loren J. Veldhuizen, City Attorney, Alton, for appellee.

Considered by Mahan, P.J. and Miller and Hecht, JJ. Huitink, J. takes no part.

Mahan, P.J.

Greta K. Postma appeals the district court decision on a motion to reconsider, dismissing her petition to overturn a previous judgment. She claims the court did not have jurisdiction to rule on a motion to reconsider after notice of appeal had been filed. She also claims the judge did not have the authority to rule on her case as a senior judge.

In January, 1998, the district court determined certain property owned by Postma in Orange City, Iowa was a hazard to public safety. The property was sold at a sheriff's sale. This sale was the subject of two previous appeals. *City of Orange City v. Lot 10,* No. 98-1389 (Iowa Ct. App. Jan28, 2002) and *City of Orange City v. Lot 10,* No. 99-1565 (Iowa Ct. App. Jan 28, 2002).

On February 5, 1999, Postma filed the present equitable action, seeking to vacate the judgment for Orange City. On September 7, 2000, the action was dismissed as an improper collateral attack on the earlier judgment. Postma filed a motion to reconsider on September 19, 2000. Prior to a ruling on her motion to reconsider, Postma filed an appeal of the September 7 ruling. See *Postma v. City of Orange City,* No. 00-1744 (Iowa Ct. App. Mar. 13, 2002).

Despite the appeal, the district court entered a ruling on October 19, 2000, denying the motion to reconsider, finding Postma's petition failed to state a cause of action. Postma now appeals the October 19 order, claiming the district court did not have jurisdiction to consider the motion to reconsider because the case was on appeal.

It is clear the district court did not have jurisdiction to consider the motion to reconsider. As a general rule, a district court loses jurisdiction over the merits of a controversy once the notice of appeal is perfected. *Gutierrez v. Wal-mart Stores, Inc.,* 638 N.W. 2d 702, 702007 (Iowa 2002); *Shedlock v. Iowa Dist. Court,* 534 N.W. 2d 656, 658 (Iowa 1995). The district court retains jurisdiction only as to issues collateral to and not affecting the subject matter of the appeal. *State v. Jose,* 636 N.W. 2d 38, 46 (Iowa 2001). Here, the issue addressed in the ruling entered after the appeal was filed was exactly the issue that was raised

on appeal. Therefore, the district court lacked jurisdiction to address the motion to reconsider.

We determine the district court's ruling on the motion to reconsider should be vacated. Because we determine the ruling should be vacated, we do not determine any other issues raised in this appeal. We note that the previous dismissal of Postma's action, appealed in *Postma v. City of Orange City*, No. 00-1744 (Iowa Ct. App. Mar 13, 2002), still stands.

RULING VACATED.

IN THE SUPREME COURT OF IOWA
No. 00-1935
Sioux County No. EQCV019287

ORDER

FILED August 02, 2002

GRETA K. POSTMA,
Plaintiff-Appellant,

vs.

THE CITY OF ORANGE CITY, IOWA,
Defendant-Appellee.

After consideration by this court en banc, Streit, J., not participating, further review of the above captioned case is denied.

Dated this 2nd day of August, 2002.

THE SUPREME COURT OF IOWA

By s/ Louis A. Lavorato, Chief Justice

IN THE SUPREME COURT OF IOWA

NO. 00-1744

GRETA K. POSTMA,
Plaintiff-Appellant,

VS.

THE CITY OF ORANGE CITY, IOWA,
Defendant-Appellee,

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY, THE HONORABLE LINDA R. READE AND SCOTT ROSENBERG. JUDGES ON CHANGE OF VENUE TO SIOUX COUNTY, THE HONORABLE GARY E. WENELL, MICHAEL J.WALSH AND DEWIE J. GAUL, JUDGES

AMENDED
APPELLANT'S BRIEF

(Omitted for purposes of this Appendix are the Table of Contents, Table of Statutes and Authorities and Statement of Issues)

Statement of the Case

This is an appeal from a separately filed "Independent Action in Equity" filed by Greta K. Postma in a vain

attempt to obtain access to justice in the state courts of Iowa. The subject of the lawsuit is an historical building in downtown Orange City, Iowa, that is extremely valuable and that a group of "investors" including the mayor's son-in-law have claimed to "own" for a number of years. But the City of Orange City, Iowa has denied Greta access to the building, refused to process her building permits and assisted in denying her access to the Iowa court system.

Following 1) the entry of numerous Ex Parte Orders and Judgments against her in the dispute concerning their illegal seizure of a large commercial building located in downtown Orange City, Iowa, 2) the repeated refusal of the Third Judicial District to allow her a ruling, much less a hearing on her Motion To Dismiss which raised substantial constitutional and jurisdictional issues, 3) the disregard of its lack of jurisdiction due to A) a removal to federal court and B) prior litigation in federal court which is *res judicata,* and, 4) the summary dismissal without trial by Judge Scott of her timely filed and served Petition To Vacate Judgment (see prior appeal 99-1565) as well as a long history of being denied access to the courts in the Third Judicial District, Greta K. Postma commenced this action in Polk County District Court as a 'Petition To Vacate Judgment, An Independent Action in Equity' (App.p.1) and requested the court to issue the mandatory stay provided by Section 624A.3 of the Code of Iowa. The City of Orange City filed its Answer; it never raised the issue of venue in any manner. (App. p. 3).

The Polk County court refused to rule on the request for the mandatory stay to issue, but sent a copy of the file to Sioux County, Iowa, without transferring the file or changing venue. (App. p. 4). Later, the Polk County court ordered that a pretrial conference be held, but the City of Orange City, Iowa, failed to appear. Just before the trial

the court *sua sponte* ordered the parties to brief the issue of whether the court in Polk County had venue of this matter and then Judge Linda R. Reade ordered the venue transferred to Sioux County, Iowa, (App. p. 6) even though the defendant City of Orange City, Iowa, had waived this issue by failing to timely object to the venue being in Polk County, Iowa. She found that Greta was a resident of Sioux County, Iowa!??????

As a result of being transferred to Sioux County, Iowa, the attorney for the city of Orange City, Iowa, the clerk of courts and the court administrator and the judges of the Third Judicial District

1) refused to consider the merits of a change of venue,

2) refused to disqualify Veldhuizen from representing the City of Orange City, Iowa,

3) refused to allow Greta any discovery, including access to **public records** which Judge Ackerman had previously ordered that Greta should have access to without any further orders,

4) set up a sham pretrial conference for June 9, 2000, which unilaterally required that Greta appear, file briefs, etc. but after not holding the pretrial conference imposed no penalty or sanction on the City of Orange City, Iowa, for failing to file its brief, ignoring the court's orders, etc.,

5) ignored Greta's motions to reconsider matters which were obviously wrong, i.e., Judge Gaul stating that this was a non-jury case, etc., and

6) dismissed this matter **after** overruling a similar motion to dismiss and granting [Greta] and expanded and amended Petition to Vacate.

[The following apply to all issues unless otherwise noted or expanded on:
SCOPE OF REVIEW: The scope of review in equitable actions is de novo. *Incorporated City of Denison v. Clabaugh,*

306 N.W. 2d 748, 751 (Iowa 1981), Iowa Rule of Appellate Procedure 4.

PRESERVATION OF ERROR: The appellant preserved error on all issues by a Notice of Appeal filed and served on October 9, 2000 (App. p. 18).]

ARGUMENT

1. THE HONORABLE LINDA R. READE ERRED BY *SUA SPONTE* ISSUING AN ORDER CHANGING VENUE FROM POLK COUNTY TO SIOUX COUNTY AFTER THE CITY OF ORANGE CITY HAD WAIVED THIS ISSUE.

[SCOPE OF REVIEW: De Novo (see supra).]

[PRESERVATION OF ERROR: Notice of Appeal (see supra)].

Long after the issues were joined and the court had held a pretrial conference (at which the City of Orange City, Iowa, had failed to appear) Judge Linda R. Reade ordered *sua sponte* the parties to brief the issue of venue and then decreed just before trial that venue be transferred to Sioux County, Iowa. (App. p. 6). Whether the venue of this case should have been originally in Sioux County, Iowa, should not have been a relevant consideration only days before trial. The Iowa Rules of Civil Procedure make it abundantly clear that the issue of venue (as opposed to jurisdiction which can be raised at any time by any participant) cannot be raised *sua sponte* by the court. After the defendant had filed its Answer and had failed to raise this issue, it is clear that it was waived and the court was duty bound to proceed to trial and not deny justice any further to Greta.

Iowa Rule of Civil Procedure 175 states:

ACTION BROUGHT IN WRONG COUNTY

(a) An action brought in the wrong county may be prosecuted there until termination, unless, a defendant **before answer,** moves for change to the proper county. **Thereupon** the court shall order the change . . . (Emphasis added).

This language is unambiguous and clear. The only time that the court can order a change of venue for bringing an action in the wrong county is if it is raised by a motion by the defendant '**before answer.**' After that time, presumably, the parties of the court may proceed under other rules for other reasons to change venue which are not applicable here. The City of Orange City, Iowa, consented repeatedly by knowingly filing a timely Answer in Polk County and by failing to object to several scheduling orders for pretrial conference and for the trial itself. This 'consent' is tantamount to the written agreement of the parties contemplated by Rule 167.

This raises a logical question. If this case had been filed in Sioux County and the parties had filed a written agreement to change venue to some other county, i.e. Polk County, could the court in Polk County overrule the court in Sioux County and send it back? And if so, on what authority, principle or rule of civil procedure? And how many times could the courts *sua sponte* venue around the ninety-nine counties of Iowa? This question is partially academic but it need not be reached if the court concludes that there is no *sua sponte* power of the court to change venue.

Such a conclusion is consistent with past decisions in which this court has found that the failure to timely file a

motion to challenge the venue is a waiver of this issue. *Hyde v. Buckalew*, 393 N.W. 2d 800 (Iowa 1986). Filing such motion before answer is mandatory. *Thornburg v. Mershon*, 216 Iowa 455, 249 N.W. 202 (1933).

The action which Greta filed in Polk County, Iowa, is an **independent** action and not adjunct to the original case. If it were adjunct to the original case, rather than independent, it would have to be filed in the same county. *In Re Rathe*, 521 N.W. 2d 748 (Iowa 1994). Since it is independent it is akin to a modification of a dissolution of marriage decree which can be filed in the "wrong county." *In Re Marriage of Engler*,, 532 N.W. 2d 747 (Iowa 1995). *Engler* supra, also contains a discussion of jurisdiction/venue as well as a footnote (2) on page 750 concerning *Rathe*, supra.

II. THE COURT, THE HONORABLE LINDA R. READE AND GARY E. WENELL ERRED BY REFUSING TO ISSUE THE MANDATORY STAY SET FORTH IN SETION 624A.3 OF THE CODE OF IOWA, SUCH STAY ALSO BEING AN INHERENT EQUITABLE POWER OF THE COURT.

> Section 624A.3 , Code of Iowa, states:
> "The party seeking to vacate or modify a judgment or order may have an injunction suspending proceedings on the whole or part thereof, which **shall** (emphasis added) granted by the court upon its being rendered probable, by affidavit or verified petition, or upon exhibition of the record, that the party is entitled to the relief asked for."

The stay of proceedings provided by Section 624A.3 is mandatory. The legislature had the option of using the word 'may' but instead chose to use the word 'shall' which

is mandatory. In Polk County the request for a stay was presented to Judge Rosenberg (who failed to rule and thus effectually denied it). They were required to review the "affidavit or verified petition, or . . . the record" and make a preliminary determination that it is "probable . . . that the party is entitled to the relief asked for." This is a very minimal "probable cause" type of determination which is always granted unless the court can articulate some element which is lacking or deficient in the pleadings or supporting documents.

The Iowa courts have consistently held that where a judgment is void either for lack of jurisdiction or lack of due process, it may be vacated by motion without being the subject of any petition. *Jacobson v. Leap*, 249 Iowa 1036, 1039, 88 N.W. 2d 919, 921 (1958); *Miller v. Farmers Cooperative Co.*, 176 N.W. 2d 832, 835 (Iowa 1970); and *Johnson v. Mitchell*, 489 N.W. 2d 411, 414 (Iowa App. 1992), citing *Fehlhaber v. Fehlhaber*, 681 F. 2d 1015, 1027 (Fifth Cir. 1982) concerning lack of due process. **Void** judgments (whether from lack of jurisdiction or lack of due process are subject to collateral attack as well as direct attack. *Geneva v. Thompson*, 200 Iowa 1173, 206 N.W. 132 (1926), and are not subject to claims of res judicata and issue preclusion/claim preclusion. *McDonald v. Mabee*, 243 U.S. 90, 61 L.Ed. 608, 37 S.Ct. 343 (1917).

Judge Wenell held a hearing in Woodbury County District Court and failed to apply Section 624A.3. (App. p. 8). He failed to realize that an 'Independent Action in Equity" is always filed **after** the one year time frame allowed by Rule 253(a) but follows the same principles in equity. He applied the discretionary standard of Rule 246 which requires a timely filing within the one year time frame and ignored the Iowa case law which has historically allowed an equitable action beyond the one

year time frame as well as the same principles and language in the federal rules. See *U.S. v. Beggerly*, 524 U.S. 38, 118 S. Ct. 1862, 141 L.Ed. 498 (1884) and *Marshall v. Holmes*, 141 U.S. 589, 12 S. Ct. 62, 35 L.Ed. 870 (1891). *In Marshall v. Holmes*, supra, the court found that the injunction which the plaintiff had obtained had been wrongfully dissolved by the lower court. It also found that the removal to federal court had been proper and the remand to state court was in error.

Iowa courts also have inherent **equitable** jurisdiction to stay the enforcement of a judgment which is not a judgment at all because of fraud or lack of jurisdiction. 30 Am. Jur. 2d § 22. Injunctions issued to stay the enforcement of such "judgments" have been consistently upheld on appeal. *Schiele v. Thede*, 102 N.W. 133, 126 Iowa 398 (1905); *McConkie v. Landt*, 101 N.W. 2d 1121, 126 Iowa 317 (1905); *Cooley ve. Barker*, 98 N.W. 289, 122 Iowa 440 (1904). There is no need to show that the plaintiff has a meritorious defense. *Schiele v, Thede, supra*, p. 134, citing *Rowley v. Baugh*, 33 Iowa 201.

Section 624A.3 is thus an expression of the legal principle mandating the issuance of an injunction or stay when a plaintiff seeks to vacate or modify an order or judgment prior to the expiration as well as the equitable principle when a plaintiff files an independent action in equity after the expiration of the one year from the entry of the judgment or order.

None of these judges abused their discretion because this was not matter of discretion; they denied justice; they should have issued a stay or injunction because of a lack of jurisdiction and lack of due process in order to prevent further injustice. Even if this had been a matter of discretion under Rule 246, the failure of the court to issue a

stay when there had been no due process and there was no jurisdiction was an abuse of discretion.

III. THE COURT, THE HONORABLE MICHAEL J. WALSH, ERRED OR ACTED ILLEGALLY BY SETTITNG ANOTHER PRETRIAL CONFERENCE FOR JUNE 9, 2000, AND THEN (THE HONORABLE DEWIE J. GAUL) FAILING TO HOLD SUCH CONFERENCE AFTER REQUIRING 1) THAT THIS APPELLANT ATTEND IN PERSON, AND 2) FAILING TO SANCTION THE CITY OF ORANGE CITY FOR FAILING TO FILE THE BRIEF THAT THE COURT ORDERED IN THE EX PARTE ORDER OBTAINED FOR SETTING THE PRETRIAL CONFERENCE.

[Scope of Review: Questions concerning the court's authority are reviewed for correction of errors at law. *In Re Marriage of Selzer*, 559 N.W. 2d 7 (Iowa 1997).]

This issue is raised because of the failure of the to follow correct procedures, whether set forth in the Rules of Civil Procedure or statutes and the Constitutions of Iowa and the United States, is not an isolated one, but instead, a consistent pattern which substantially prejudices her and denies her access to the courts on a level playing field.

On the same day (May 30, 2000) that the City of Orange City, Iowa, filed a motion which requested a final pretrial conference (which had already been held (App. p. 8)) the clerk of courts presented it to Judge Walsh, who Ex Parte and without waiting the required ten (10) days ordered that a Pretrial Conference be held on June 9, 2000. Judge Walsh should have given the motion back to the clerk of courts for regular handling, i.e, service on Greta, waiting the appropriate time for a response and then either a ruling on a motion day or a hearing. Upon hearing, the

motion should have been denied since the pretrial conference had already been held. (App. p. 8). Orange City had waived its right to file this motion by not raising these "issues" at the pretrial conference. See Rules 100, 104 and 106, I.R.C.P. NOTE: They failed to attend the March 17 conference!

Instead, both parties were ordered to file briefs and to appear in person. Greta complied in all respects and also filed additional motions. The City of Orange City, Iowa, did not comply with **any** aspect of the order except that it appeared by its attorney. No pretrial conference was held; no final pretrial order was entered. Greta had to drive almost 200 miles and stay overnight in order to be present and had sought to be allowed to do this (nonexistent) pretrial conference telephonically, but she had been emphatically denied this privilege.

The reason she had been denied this privilege (which is routinely granted) was that there never had been any intention of holding a pretrial conference. The plan was that Greta would not show up and then the court would dismiss this action. When she did appear neither the court nor the City of Orange City was ready to follow their own order. The purpose of the Rules of Civil Procedure is to provide for Due Process, both substantive and procedural, not play games in order to inconvenience Greta and cause her further expense and aggravation! Judge Gaul should have allowed the hearing to be conducted telephonically and should have conducted the hearing. He insisted that the order required Greta's appearance and he could not change it to allow her to appear telephonically so he should have insisted on strict compliance by the City of Orange City and its attorney also. When the City of Orange City failed to comply with the order the court should have imposed some sanction by denying them the

right to introduce evidence or witnesses or both! Upon remand to another judicial district the court should allow Greta to file for sanctions against the City of Orange City, Iowa.

IV. THE COURT ERRED BY REFUSING TO 1) DISREGARD THE 'GENERAL DENIAL' FILED BY THE CITY OF ORANGE CITY, IOWA, AND 2) FAILING TO GRANT GRETA'S REQUEST FOR ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE CITY OF ORANGE CITY, IOWA.

[SCOPE OF REVIEW: De Novo, but the standard of review is for abuse of discretion. *Smiley v. Twin City Beef Co.*, 236 N.W. 2d 356 (Iowa 1975).]

On June 9, 2000, Greta moved to strike the improper Answer of the City of Orange City, Iowa, and for Entry of Default and Default Judgment against it. (App. p. 11). Judge Gaul ruled that there is no Motion To Strike and that a general denial is allowed citing *Keeney v. Lyon*, 10 Iowa 546 (1860). The undersigned believes that the standard for review is for corrections of errors at law.

"GENERAL DENIALS ABOLISHED" is the title to paragraph 131 of Dwight G. McCarty's 1950's revision of his work *Pleading and Practice*. "[N]o longer can the pleader make a blanket denial thus leaving the hidden and uncertain defense . . .[t]he cases on the subject are of no further validity and can be disregarded." Even if *Keeney*, supra, was still valid law, the Answer filed by the City of Orange City, Iowa, is "manifestly frivolous, scandalous and irrelevant." *Keeney*, supra, whereas in *Keeney*, supra, it was not. Because the Answer was not valid and the City has no valid defense to obtaining an Ex Parte default order

against Greta when she in fact was not in default (her Motion to Dismiss was served **and received by both Veldhuizen and the City of Orange City, Iowa).** This is also the reason they failed to attend the Scheduling Conference in Polk County, Iowa, and Sioux County on March 17, 2000.

McCarty goes on to discuss the 'famous Iowa cow case' and says on page 108 that"[t]hese decisions may seem rather technical in some instances but they are all founded on the theory that when the prescribed and well known averment is avoided (in this instance to "specifically admit or deny each paragraph") it is for a purpose - usually an evasive purpose." Obviously neither Veldhuizen nor the City of Orange City want to have the truth come out nor for Greta to have her "day in court" but the court should not delay the ultimate by refusing to put them in default when they deliberately ignore the rules of this court!

Even when *Keeney, supra,* was good law there were numerous cases which stated that the general denial must be simple and direct and that when the pleading added other matters and averments and defenses, that the general denial would be disregarded. See *Miller v. Johnson,* 218 N.W. 2d 472 (Iowa 1928). In *Hart v. Hart,* 160 N.W. 2d 438 (Iowa 1968) the court stated that the denials and defenses are "distinct and separate parts of an answer and they must be separately stated. A denial should not be incorporated into an affirmative defense . . ." The general denial which is contained in the rambling answer of the city is effectually eliminated and "will be disregarded" by an Iowa court. The resulting effectual pleading which is left over is a nullity, as void of purpose and meaning as the Ex Parte Judgments and orders which were obtained in the original action. The " . . . allegations of a petition standing undenied are deemed

admitted." *Claeys v. Moldenshardt,* 148 N.W. 2d (Iowa 1967). Thus there was nothing preventing the court from entering a default and judgment against the City and in favor of Greta and the court should have done so forthwith!

Since the adoption of Rule 72, I.R.C.P., there has been no case law on the appellate level where any other attorney has so blatantly ignored the requirements of the court to "specifically admit or deny" so, it is appropriate to turn to Rule 98 which also uses the word "specific." There, a general denial (of performance of conditions precedent) was held insufficient and was found to not put in issue the "question of performance or occurrence of a condition precedent." *Briney v. Tri-State Mutual Insurance Company,* 254 Iowa 673, 677-678, 117 N.W. 2d 889, 891-892 because I.R.C.P. 98 "also required defendant to **specifically plead** those facts relied on if it elected to controvert this allegation." *Henschel v. Hawkeye-Security Insurance Company,* 178 N.W. 2d (Iowa 1970) at p. 418.

Again in *M-Z Enterprises v. Hawkeye-Security Insurance Company,* 318 N.W. 2d 4088 (Iowa 1982) the court found that a denial of the petition for lack of knowledge was **not sufficient** to place the plaintiff's capacity to sue squarely in issue before the court and cited *Burr v. Apex Concrete Co.,* 242 N.W. 2d 272, 274-75 (Iowa 1976); *Winterset Savings Bank v. Illiam,* 211 Iowa 1226, 1227, 233 N.W. 749, 749 (Iowa 1930). And again in *Heabelin v. Heabelin,* 122 N.W. 2d 841 (Iowa 1963) the court ruled that a partial defense cannot be raised by a general denial but must be specifically pleaded.

To allow the erroneous ruling of the court to stand would roll the rules of pleading back to 1860, just prior to the Civil War and make a mockery of everything that this

court has done in the Twentieth Century. This case should be remanded for Entry of Default and, further for a Judgment against the City of Orange City, Iowa.

V. THE COURT, THE HONORABLE DEWIE J. GAUL, ERRED BY REFUSING TO CHANGE VENUE OUT OF THE THIRD JUDICIAL DISTRICT.

[SCOPE OF REVIEW; De Novo, but the standard of review is the sound exercise of discretion by the trial court. See page 18 of this brief [page 23 herein].]

Greta filed a Motion to Change Venue which was properly supported by Affidavits; no counter affidavits were filed by the defendant. (App. p. 12). This was pursuant to I.R.C.P. 167(c) and general principles of due process, equity and fair play. Upon hearing, Judge Gaul failed to rule on the merits and instead (contrary to the record) ruled that this was a non-jury case and that he was not prejudiced. When Greta filed a Motion To Reconsider it was ignored; any and every motion or request for a hearing has been ignored since the filing of the original "Motion To Dismiss" filed in the original case against her. The only way that she obtained the emergency hearing on the request for the emergency stay was to make repeated phone calls to the court administrator (who finally scheduled a hearing which would have been too late, i.e., after the issuance of the sheriff's deed) and, ultimately, a complaint to the chief judge, the Hon. Richard J. Vipond. This pattern of ignoring the plain merits of the case should be considered by this appellate court, as well as the affidavits and other record. Note that this is in sharp contrast to the handling of the Ex Parte Default Entry against Greta as well as the other motions and Ex Parte orders entered against her, all accomplished without notice and without any opportunity to be heard and

completely in disregard for the rules of court and the constitutions of Iowa as well as the United States.

The court should have granted the change of venue out of the Third Judicial District. All references to Judge Ackerman (and his prior rulings) should be ignored since 1) he should have disqualified himself because his law firm was involved against Greta in this matter and 2) because the motion before him was not supported with affidavits and the other content which is set forth in this **later** motion. (App. p. 12). The failure to grant the change of venue is a denial of due process and equal protection because of this continual pattern of denying access to the courts to Greta. 5th and 14th Amendments, U.S. Constitution and Article I, Section 18, Iowa Constitution.

Denial of access to the courts by repeatedly failing to give notice and opportunity to be heard over a considerable period of time not only makes the court's actions void, but has been described as "judicial usurpation and oppression." In *Hovey v. Elliott*, 167 U.S. 215 (1897), the United Sates Supreme Court stated,

> "It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, **and has been afforded an opportunity to be heard.** Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and can never be upheld where justice is justly administered."
> **(Emphasis in the original).**

This policy of "usurpation and oppression" in the Third Judicial District denies Greta the constitutional right to a neutral and detached judge. *State v. Mann,* 512 N.W. 2d 528, 532 (Iowa 1994).

At the threshold, any exercise of the "meaningful opportunity to be heard" guaranteed by the Due Process clauses presupposes that the judicial officer will listen. The guarantee implies that the judicial officer will listen with a mind open and fair according to law, and not with a mind already determined, or tainted with personal prejudice, predilection or bias. *In Re White,* 349 U.S. 133 (1955); *Ward v. Monroeville,* 499 U.S. 57 (1972); *State v, Mann,* supra.

The standard of review is the sound exercise of discretion by the trial court. However, when the moving party brings themselves within the rule's requirements as Greta did here (without the opposing party supplying any counter affidavits or other record other than unsupported allegations), the change of venue is **mandatory.** *Becker v. Wright,* 540 N.W. 2d 250 (Iowa 1995) reh. den.; *Peters by Peters v. Vander Kooi,* 494 N.W. 2d 708 (Iowa 1993) reh. den. Ignoring the plain mandates of the rules and established case law is consistent with the judges refusal to acknowledge their **policy of prejudice and bias** by which they deny Greta access to the courts.

The court misapplied the content of the three affidavits because it construed them as though this was a nonjury case rather the jury case that it has been from the beginning. Since Judge Gaul had just been involved in the 'Final Pretrial Conference' he certainly knew this was a jury case, but this was consistently the type of **non-**response which the Third Judicial District issues to Greta whenever she "lays out the facts" or attempts to obtain the

facts through discovery as will be later addressed. (App. p. 16). Then when Greta moves the court to reconsider that ruling, her motion is ignored and never ruled on. Clearly the only conclusion that can be drawn from this repeated pattern is that there never will be any unbiased, unprejudiced justice for Greta in the Third Judicial District.

VI. THE COURT, THE HONORABLE DEWIE J. GAUL, ERRED BY REFUSING TO DISQUALIFY LOREN J. VELDHUIZEN FROM CONTINUING AS ATTORNEY FOR THE CITY OF ORANGE CITY, IOWA.

The undersigned believes that the standard for review is an abuse of discretion. See footnote 17 on page 237, 7 Am Jur. 2d Attorneys at Law, Section 204. [Also, *Oldsen v. Jarvis*, 159 N.W. 2d 431, 436 (Iowa 1968).]

The record is replete with instances in which Veldhuizen has made misrepresentations (hardly unintentional), created confusion and caused hardship to Greta as well as a needless waste of judicial resources (App. p. 16). In addition, there are numerous conflicts of interests, between his representation of Greta's family, the "investors" who think they own the building, his role as city attorney, his role as a witness in this case who will be called for several reasons, including his personal desires and interests.

In *Rowen v. LeMars Mutual Ins. Co.*, 230 N.W. 2d 905 (Iowa 1975) the Iowa Supreme Court required a recusal of counsel because of a **potential** conflict of interest between parties to a lawsuit. In *Rowen*, supra, the court affirmed its power to control the representation of clients by attorneys as a part of its inherent judicial powers. The court stated that ruling on a potential conflict of interest is not

premature but that it was well established that it is within the discretion of the court to "nip any potential conflict of interest in the bud" citing *Tucker v. Shaw*, 378 F. 2d 304, 307 (2nd Cir. 1967) and other cases at p. 914.

Since it is common knowledge that the mayor's son-in-law is part of the "investors" who claim to already own this building is analogous to a corporation which expends its resources to defend corporate insiders in derivative actions which is also prohibited. *Rowen*, supra, pp. 914-915. However, the City of Orange City, Iowa, is not a private corporation but a public entity and Veldhuizen is a public officer as city attorney. Courts have refused to allow this type of conflict even when the parties consent. *Whitewater v. Baker*, 299 N.W. 2d 584 (Wis. 1980); *In Re A&B*, 44 NJ 331, 209 A. 2d 101, 17 A.L.R. 3d 827.

The court refused to disqualify Veldhuizen citing a prior ruling, again by Judge Ackerman, (note Ackerman's refusal to disqualify himself in spite of his own prior involvement which is the subject of a prior appeal) which again was not supported in the same manner and did not allege the new developments, etc. as the previous motion. Both the failure to rule on the merits of the motion and the fact of allowing Velduizen to continue in this case are violations of Due Process of both the 5th and 14th Amendments as well as the Equal Protection Clause of the 14th Amendment, U.S. Constitution. The court should have barred Veldhuizen from further involvement in this matter.

VII. THE COURT, THE HONORABLE DEWIE J. GAUL ERRED BY REFUSING TO COMPEL DISCOVERY AND INSTEAD, DISMISSING THIS ACTION.

[The standard of review in discovery matters is for an abuse of discretion. *Farnum v. G.D. Searle Company*, 339 N.W. 2d 384, 389 (Iowa 1983).]

The court refused to compel discovery of relevant and material matters which were framed by the issues as set forth in the Amended Petition To Vacate Judgment. (App.p.14). One of these concerned public records which even Judge Ackerman had declared to be matters which Greta should have access to without further intervention of the court! The court failed to rule on these matters and instead dismissed the Petition To Vacate Judgment (which it had recently amended). There was no basis for dismissing this action and the court is unable to articulate in what manner the amended Petition To Vacate is inadequate. This is particularly so in light of the new evidence set forth in the additional affidavits filed with the amended Petition and the fraud that was obviously carried out by Veldhuizen in lying to the court repeatedly in order to obtain Ex Parte orders. (App. p. 16).

[Standard of review on a Motion to Dismiss does not depend on discretion; it must rest on legal grounds. *Symmonds v. Chicago, M. St. P.& P. R. Co.*, 242 N.W. 262 (Iowa 1976).]

An analysis of the complexities of pleading under the rule relating to vacation of judgments is unnecessary since compliance with the rules is not essential where the underlying judgment is void. *Korsrud v. Korsrud*, 242 Iowa 178, 45 N.W. 2d 848 (1951). This is in accord with *Jacobson v. Leap*, supra; *Miller v. Farmers Cooperative Co., supra*, and *Johnson v. Mitchell*, supra, where the court stated that void judgments can be vacated without being the subject of a petition to vacate. Note: this judgment is void for lack of due process as well as lack of jurisdiction.

The Third Judicial District denied Greta the right to conduct normal discovery in order to obstruct her efforts to expose the irregularities which cause her to be placed in default and be subjected to the Ex Parte orders and judgments to be placed against her, rather than to fulfill their oath bound duty to assist her in 1) promoting the policy of law that every cause of action should be tried on the merits; and 2) ensuring that litigation is fair and orderly (see *In Re Marriage of Cutler*, 588 N.W. 2d 425 (Iowa 1999) reh. den.

This dismissal as well as the denial of discovery are contrary to the Due Process and Equal Protection guarantees of the 5th and 14th Amendments as well as Article I, Section 18, Iowa Constitution.

CONCLUSION

A stay should have been issued; the Third Judicial District has repeatedly denied Due Process and Equal Protection to Greta K. Postma. This matter should be reinstated, sanctions placed against the City of Orange City, Iowa, and it should be remanded to Polk County, Iowa, for Entry of Default and a default judgment against the City of Orange City, Iowa.

REQUEST FOR ORAL ARGUMENT

This appellant requests the court to be heard in oral argument.

Respectfully submitted,
s/ Greta K. Postma
P.O. Box 531
Clara City, MN 56222
320-847-2194

IN THE SUPREME COURT OF IOWA
Nos. 00-1744 & 00-1935
Sioux County No. EQCV 019287

ORDER

Filed May 24, 2002

GRETA K. POSTMA,
Plaintiff-Appellant,

vs.

CITY OF ORANGE CITY, IOWA,
Defendant-Appellee.

This matter comes before the court, en banc, Streit, J., not participating, upon the plaintiff's motion to disqualify, motion to amend appellant's brief, motion to strike duplicate copies, motion to consolidate and motion to vacate dismissal by court of appeals.

Upon full consideration, the plaintiff's motions are all denied.

Dated this 24th day of May, 2002.

THE SUPREME COURT OF IOWA

By s/ Louis A. Lavorato, Chief Justice

IN THE SUPREME COURT OF IOWA
No. 00-1935
Sioux County No.EQCV019287

ORDER

Filed Feb 06, 2002

GRETA K. POSTMA,
Plaintiff-Appellant,

vs

THE CITYOF ORANGE CITY, IOWA,
Defendant-Appellee,

This matter comes before the court upon the appellant's motion to amend and motions to consolidate. Upon consideration, the motion to amend is granted and the appellant's supplemental appendix is accepted as filed.

As for appellant's motions to consolidate, the supreme court is unable to consolidate appeals which are pending in the supreme court with appeals that have been transferred to the court of appeal. The court of appeals has recently issued opinions in 98-1389 and 99-1565, and 00-1744 has already been submitted nonorally. This appeal has only just been made ready for screening. Should this appeal also be transferred to the court of appeals prior to an opinion being filed in 00-1744, appellant may renew her motion to consolidate before the court of appeals.

Dated this 6th day of February, 2002.

By s/ Louis A. Lavorato
Justice, Supreme Court of Iowa

IN THE SUPREME COURT OF IOWA
NO. 1-1001/00-1744

GRETA K. POSTMA
Plaintiff-Appellant,

vs.

CITY OF ORANGE CITY, IOWA,
Defendant-Appellee.

APPLICATION FOR FURTHER REVIEW FROM
COURT OF APPEALS
BY APPELLANT, GRETA K. POSTMA

Filed April 2, 2002

Introduction and Background

This application arises from an appeal (hereinafter referred to as the "third appeal") which was filed from the dismissal of an action to vacate an Ex Parte judgment which had been obtained against her and her property in Sioux County, Iowa, after she was repeatedly thwarted in her attempts to obtain access to the Sioux County District Court. Her two prior appeals from that Ex Parte Judgment have been 'dismissed' by the Court of Appeals and are presently the subject of Applications For Further Review as well as Petitions for Writs of Certiorari.

Subsequent to filing the previous Applications For Further Review the undersigned appellant has confirmed in a telephone conversation with the Clerk of the Supreme Court that briefs are subjected to a review process by the staff of the clerk's office at the time of filing and, **if the briefs are defective in form (as dictated by the Appellate Rules) a letter is sent to the attorney advising them of the**

nature of the defect and giving them a limited time in which to correct the deficiencies. A review of the files in these appeals shows **no such letters have been issued which necessitates the conclusion that these briefs were determined to be sufficient in form and in compliance with the Appellate Rules of Procedure. [Emphasis original].**

Assuming that it is possible for the staff to overlook certain matters and for the appellate justices to still find deficiencies which need to be corrected, the 'letter of deficiency' procedure (which is not set forth in any rule) should still be the remedy, particularly since experienced attorneys are afforded this privilege.

However, this Appellant does not ask any appellate court to become an advocate for her, etc. and takes full responsibility for the briefs as filed. This Appellant does not believe that any research, etc. is required or necessary by the court (particularly since the issue of the subject-matter jurisdiction (in the original action against her) can be raised at any time, *sua sponte*, . . .**BUT,** in order to assist the court and to completely fulfill the requirements of the rules, **this Appellant will file herein an Amended and Substituted Brief.** [Emphasis in original]

Decision of Court of Appeals

The Court of Appeals issued similar memorandum opinions in both appeals and rendered the decision '**APPEAL DISMISSED**' in each case. The reason cited by the court of appeals is a failure to comply with the rules of appellate procedure.

The court of appeals cited several cases, but in NONE OF THOSE CASES was the result 'appeal dismissed' as the court of appeals entered here. The court of appeals also cited Iowa Rule of Appellate Procedure 6.14(1)(e), (formerly 14(a)(5)) which does not make any reference to dismissal for failure to comply with any portion of the form of the briefs (nor has this Appellant been able to

locate any statute, rule or authority in Iowa whereby an appeal has been or could be dismissed as the penalty for failure to comply with a rule or portion thereof except for former Iowa Rule of Appellate Procedure 14(a)(3) which is inapplicable here.

* * *

This Appellant urges the supreme court to make a side-by-side comparison of her Briefs with the Brief . . . of the Appellee, who is represented by an experienced lawyer (30 years) from a large law firm, with the resources to hire outside counsel and has available the advice and resources of the Iowa League of Municipalities. The purpose of this comparison is whether the lay person (Appellant) or the legal experts (Appellee) have more nearly complied with the Iowa Rules of Appellate Procedure! The 'brief' filed by the Appellee is not a brief within the meaning of the rules; it is only a ten minute dictation. It contains little if any research or analysis and thus fails to comply with any of the rules, including the rules which require it to object if it finds that the standard of review is incorrect, etc. But the court of appeals has ignored this completely.

ARGUMENT AND BRIEF

I. THE COURT OF APPEALS ERRED BY EXCEEDING ITS AUTHORITY AND STATUTORY POWERS:

A. In contravention of 602.5106(1), Code of Iowa which grants the Iowa Court of Appeals limited power and authority as follows:

"1. The court of appeals may **affirm, modify, vacate, set aside, or reverse** any judgment, order, or decree of the district court or other tribunal which is under the jurisdiction of the court, and may remand the cause and direct the entry of an appropriate judgment, order, or decree, or require further proceedings to be had as is just.

If the judges are equally divided . . . shall be affirmed." (Emphasis added).

The power to **dismiss** a case is omitted from the operative language of this section; it is thus reserved exclusively to the Iowa Supreme Court when it has expressly **omitted** from the powers vested in the court of appeals. The rules for and decision on the interpretation of statutes repeatedly and logically conclude that when the legislature could have included additional language, a word or a phrase, but have failed to do so, it is conclusive evidence that they did not intend to grant such power to the court of appeals.

B. In violation of 602.4201(1), Code of Iowa, (which vests the rulemaking power **solely** in the supreme court) and 602.4202(1), Code of Iowa, (again, **solely** the supreme court . . .) by creating a new 'rule' providing for dismissal of cases for failure to comply with Iowa Rule of Appellate Procedure 6.14(1)(e) in a retroactive manner when the supreme court could have included such a provision in the rules but has not done so as it has done in Iowa Rule of Appellate Procedure 6.14(1)(c). Please note the voluminous research citing cases, statutes, constitutions, rules and authorities contained in and cited to the court in the briefs which the Appellant has filed and which thus distinguish this case from *Inghram v. Dairyland Mut. Ins. Co.*, 215 N.W. 2d 239, (Iowa 1974) where the appeal was dismissed **pursuant to the rules** (since IRAppP 6.14(1)(e) provides that issues for which no authority are provided may be deemed to be waived), and also from *State v. Stoen*, 596 N.W. 504 (Iowa 1999) where the court **refused to dismiss** even though the attorney for the appellant did not "begin with a discussion of the applicable scope of review and an identification of how error was preserved, with citation to the place in the record where the issue was raised and decided." Id., p. 507. That case continued with a discussion of *State v.*

Crone, 545 N.W. 2d 267 (Iowa 1996), where the supreme court reached the same conclusion although there was a failure "to argue or cite any authority in support of its position on a specific issue. . ."Id., p. 507.

C. By overruling the "law of the case" established in these appeals by the Iowa Supreme Court. On three separte occasions in the first appeal, to-wit: December 15, 1998 (Carter,J); April 29, 1999 (Carter, J): and, finally September 14,1999 (Lavorato, J) the Iowa Supreme Court has overruled Motions to Dismiss filed by the Appellee. In one of these attempts to dismiss the appeal, the issue of the sufficiency of the briefs of the Appellant was specifically addressed and ruled upon (on April 29, 1999) (Carter, J) adversely to the Appellee [City of Orange City]. Thus the "law of the case" created by such ruling and the ruling itself is now being vacated and set aside by the court of appeals. Again it has no power to overrule the supreme court.

A prior ruling of the appellate court has been held to be *res judicata* in *Modern Leasing v. Falcon Mfg. of California*, 888 F. 2d 59 (8th Circuit, 1989), on page 61, where the court also found that there was no prejudice resulting from certain omissions.

D. By overruling the "law of the case" established by the review conducted by the staff of the Clerk of the Supreme Court which determined that the briefs were sufficient in form and thus issued no 'letter of deficiency' to this appellant in any of these appeals. The issuance of such a letter is not only an unwritten rule but is the procedure which has been determined to be appropriate in other states. *Commonwealth v. Gambal*, 561 A. 2d 710 (Pa 1989).

Conclusion

By exceeding its powers and authority in each of these four ways the court of appeals has violated the Appellant's right to Due Process guaranteed by the Fourteenth

Amendment. *Hicks v. Oklahoma*, 447 U.S. 343, 346, 100 S.Ct. 2227, 2229, 65 L. Ed 2d 175 (1979); *Thompson v. Missouri Board of Parole*, 929 F.2d 396 (8th Cir. 1991), see footnote 10 on page 401, where the Eight Circuit Court of Appeals cites *Hicks*, supra, for the proposition "a state's failure to abide by its own laws that results in a deprivation of liberty constitutes a violation of due process clause of the Fourteenth Amendment."

* * *

IV. FINALLY, THE COURT OF APPEALS HAS ERRED BY FAILING TO PROTECT AND PRESERVE THE APPELLANT'S CONSTITUTIONAL FIRST AMENDMENT RIGHTS OF ACCESS TO THE COURTS WHICH HAVE BEEN AND CONTINUE TO BE WHOLLY DENIED BY THE DISTRICT COURT

This appellant has repeatedly and consistently been denied access to the courts in the Third Judicial District, without cause and as a matter of policy by the court administrator, Leesa J. McNeil, and the Sioux County clerk of courts' office. It is clear that Greta cannot get a timely hearing without repeated calls and requests, including usually one or more calls to the Chief Judge, Richard J. Vipond (who has failed to take any permanent corrective actions), particularly since she now has matters pending which should have been assigned for trial over a year ago, but are laying dormant and ignored. Similarly, the City has been able to eliminate trial dates (one in Polk County and again, in Sioux County) without any hearing, and the City has been able to repeatedly obtain Ex Parte orders, rulings and judgments, backroom hearings and testimony without allowing Greta the right of cross-examination or to make a record of what is said and none of these Third Judicial District judges and court personnel exercised their

sworn duty to uphold the constitution and the laws of the State of Iowa in order to protect her, her property and her rights.

As a result it has been difficult, if altogether impossible to make and preserve a record and issues for appeal. Every order and judgment signed and entered by the lower court during 1997 and 1998 was obtained Ex Parte and fraudulently by Veldhuizen on behalf of the Appellee and the persons who intend to profit from this corruption. Thus, the filing of the Appeal has sometimes been the only method stating 'how the issue was preserved for review.' The Notice of Appeal needs no 'discussion, citing relevant authority' when it has been the only method of making a record. (Note the court's intention to issue a protective injunction and bond "if the ordered study cannot be conducted safely and conveniently" in the second to last paragraph of the purported, but void, Ex Parte ' Findings, Conclusion and Judgment' dated the 13th day of January, 1998, entered by the Hon. James D. Scott. This is unprofessional to say the least.

The City of Orange City, Iowa, along with Veldhuizen continues this pattern of conduct by making Ex Parte communications to the Supreme Court (letters and memos which include argument, purported statements of fact, etc.) which are not served upon the Appellant. The City, upon the advice and direction of Veldhuizen refuses to obey the district court order by which the Appellant has obtained an injunction of the issuance of the sheriff's deed (which Veldhuizen has led the courts to believe has already been issued and, the further direction of the district court in such order to stay the Ex Parte order of January 9, 2000, by which it illegally obtained possession of the building and they continue to refuse Greta and her husband the possession which they are entitled to. They also have refused access to public records of the City of Orange City, Iowa, including the applications for permits,

minutes of public meetings and the file-stamped copy of the Motion to Dismiss which was served upon and filed with the City in October, 1997. This order was included in the previous Applications For Further Review to overcome the false and misleading statements made by Veldhuizen in writing to this court and to clearly establish the state of the lower court record concerning the abeyance of the sheriff's deed and the possession of the property.

The right of access to the courts is contained in the 'petition for redress of grievances' clause of the First Amendment, United States Constitution. As a First Amendment right it is of paramount importance and should have been considered by the Court of Appeals in analyzing and protecting this appeal.

Conclusion

The Court of Appeals erred by failing to consider and apply 1) the denial of the First Amendment right of access to the district court, and 2) protect the Appellant's right of access to the appellate courts of the State of Iowa. The decision should be vacated and set aside and the Supreme Court should proceed to enter an appropriate determination of this appeal, and **any further proceedings in the Iowa district courts should be held in a location other than the Third Judicial District.**

FINAL ANALYSIS, ARGUMENT AND CONCLUSION

The Court of Appeals had no authority or power to render its decision 'Appeal Dismissed' but did have the authority and power to "require further proceedings to be had as is just." Section 602.5106(1). The Court of Appeals, if it still found inadequacies after considering and applying the First Amendment right of access to the courts on behalf of Greta, should have entered on order requiting her to recast the briefs in accordance with the rules, etc. and providing a specific, prompt time for her to do so. This is already the standard method of handling

deficiencies which have been detected upon review by the staff at the offices of the Clerk of the Supreme Court, which presumably found none in this brief since no 'letter of deficiency' was issued.

However, the undersigned urges the court to examine the record to at least determine that her rights of access to the courts have been violated, by the Court of Appeals as well as by the district court in Sioux County, Iowa. Upon reversal as prayed for this appellant requests the court to issue an order that all pending and further proceedings in this matter which are contained, pending or contemplated by either party or of record in the district court of Sioux County, Iowa, have jurisdiction and venue only in the District Court in Polk County, Iowa.

REQUEST FOR ORAL ARGUMENT

In the event that further review is granted, the Appellant requests the court to be heard in oral argument.

Respectfully submitted,
S/Greta K. Postma

AFFIDAVIT IN SUPPORT OF APPLICATION FOR FURTHER REVIEW AND MOTION TO AMEND APPELLANT'S BRIEFS

STATE OF MINNESOTA)
SS:
COUNTY OF KANDIYOHI)

I, Greta K. Postma, the Plaintiff-Appellant herein, having been duly sworn on oath, depose and state as follows:

1. That on March 14, 2002, I placed a telephone call to the Clerk of the Supreme Court, R.K. Richardson, and discussed with him the standard practice (not contained in the rules) of screening all briefs as they are filed for determining whether they comply with the Rules of Appellate Procedure concerning format and technical requirements.

2. R.K. Richardson confirmed that all briefs are screened for that purpose and further, if they fail to comply in any manner a letter is sent advising the person who filed the brief that they have a limited period of time to refile the briefs in compliance with the rule; if no such letter has been issued the briefs are in compliance with the rules.

3. In this appellate case, the record shows that there was no letter issued concerning deficiencies which were found in the screening process and this appellant received no such letter at any time.

4. This appellant has reviewed other appellate cases and discovered that some briefs which are filed make no attempt to comply with the rules, e.g. *Vander Wel v. Vander Wel*, No. 1-850 / 01-0438 (Iowa Ct. app. February 6, 2002) wherein this court issued an Order on October 9, 2001, directing the appellee's attorney to refile the brief by

including a Table of Contents, Table of Authorities and Statement of Issues, page numbers, etc., all of which had been omitted by an experienced attorney (over twenty (20) years who had at one time been a candidate for attorney general of the State of Iowa!

5. The penalty for these major omissions in these briefs (when refilled in *Vander Wel*, supra, the covers were still white [instead of red as required by the rules] and other appellate cases was **NOT TO DISMISS** the appeal upon the discovery of an omission, but to first allow the writer of the brief the opportunity to amend the brief and bring it into compliance with the rules.

6. On May 15, 2002, the Court of Appeals issued a ruling on the merits in this same court case in 2-231 / 00-1935. The brief which this appellant filed in that case is no different from the ones filed in this appeal and the previous appeals which have been dismissed by the court of appeals; the only difference is the justices who were assigned to the case!

FURTHER AFFIANT SAYETH NOT!

S/ Greta K. Postma

Subscribed and sworn to before me on this 21st day of May, 2002.

S/ Trudy A. Gaub
NOTARY PUBLIC

AFFIDAVIT OF GRETA K. POSTMA
Filed in support of Independent Action In Equity
EQCV019287

GRETA K. POSTMA VS. CITY OF ORANGE CITY

STATE OF MINNESOTA)
SS:
COUNTY OF CHIPPEWA)

I, Greta K. Postma, having been duly sworn on oath depose and state as follows:

1. All "improvements" which are the subject of the judgment against me fail to "improve" or add any value to the property which is the subject of the judgment. The testimony is that it was worth the same before the "improvements" as after and this is because:

a. $14,,000+/- was the cost of boarding up the windows which were not defective but had documents and other information "published" on them; the windows which were broken were boarded up (see Exhibit A) and the cost of all repairs as determined by a glass expert (Vogel Paint and Glass) would have been $82.00 of glass plus a few hours labor.

b. the $22,000+/- for replacement of sidewalks was for sidewalks on city property which had been repaired (see Exhibit A) and which were not the subject of this citation but which were under the jurisdiction of the "sidewalks" ordinance which the city ignored and failed to follow (Exhibit I-[not included in this Appendix]).

c. the other "repairs" were:

1) the removal of the chimneys which the state fire marshal stated in December, 1995, should be "repaired." (See Exhibit B)

2) the shoring up of the canopy, which (a) is owned by the City, (b) I never owned or assumed responsibility or control over, and (c) my plans for the Dutch Front would require this to be removed. NOTE: the county assessor has orally admitted that she did not realize this and apologized for testifying falsely. (See Exhibit C).

3) a lot of paint and cosmetic appearance issues which have nothing to do with safety but everything with covering up what the city has done by illegally seizing this building and the refusing to take care of it or issuing any permit to enable me to do so.

2. The actual value of the building is substantial and Invision Architecture know this because (a) it is overseeing the rehabilitation of the Call Terminal Building in Sioux City, Iowa which was just purchased for $350,000 and, (b) Wil Forker's building on Lower Fourth Street (which was the subject of several motorcycle gang drug sales) is for sale for $175,000 by Remax Realty, and (c) these old buildings, including my property (See Exhibit D) have a substantial value because of the 20% investment tax credit available in the U.S. Tax Code and other historical grants and financial incentives.

3. The contractors who "improved" my building damage the roof located immediately above the private offices (and adjacent to the large chimney which was removed) so that the golden oak paneling was damaged along with other valuable personal property items. NOTE: this area of the roof was replaced a few years earlier and has never leaked.

4. The mayor's son-in-law, Dale Pluim, is publisher of the local newspaper and along with a group of downtown local business persons "invested" in the ownership of my building because they thought they could buy it cheap and profit from the City of Orange City's refusal

a) to review and respond to the "Dutch Front" application (to comply with the Dutch Front Ordinance described in Exhibit E) which I filed in October, 1988, along with a "Dutch Front" design by Beuttler Architects who designed this building in 1918-19. This architect also designed Diamond Vogel's new "Dutch Style" office building, but the Committee told me that these architects did not know anything about Dutch architecture!(??) and told me I had to use "their architect," Visser of Sioux Falls.

b) to cooperate in my use of "their architect" - after contacting Visser, he came back three (3) months later in May, 1989, and stated that the "Dutch Front" Committee had told him not to work for me.

c) to process and respond to my design - because I have a degree in art from Northwestern College in Orange City, Iowa, and have taken several graduate courses in design from Drake University, I did some research and drew up my own design (Exhibit F) which I submitted to the committee in July, 1989, but instead of a response (to approve the design) they had Loren J. Veldhuizen amend the city ordinance to say that only one grant per building could be issued even though my building is 9% of the *frontage* of the buildings in downtown Orange City since it is 150 feet on one side and 60 feet on the other. NOTE: Assessments are constitutional only if issued on the basis of frontage per foot.

d) to respond to the request for a simple building permit application filed in July 1990,

e) to preserve these as part of its public records. Some of these documents remain and there are numerous witnesses.

f) To respond to my application for a simple building permit in May, 1997, (See Exhibit G) although the City of Orange City had publicly promised to issue such a permit. I had satisfied all the safety concerns (except the canopy

owned by the City of Orange City, Iowa) prior to the Tulip Festival of May, 1997. (See Exhibit A)

5. This illegal seizure of the building (NOTE: Veldhuizen told my last tenant to leave because the city was "taking over anyway" and he would have to leave sooner or later so he rented space from Veldhuizen and paid him $15,000 instead of me over the next several years) makes them responsible for the repairs, safety and upkeep of the building even though they refuse to pay me any portion of the $140,000 I have invested in this property, nor do they allow me to be on the property without being harassed and stalked by some police officer (Dan De Vries did this one Sunday afternoon).

6. The City of Orange City and its contractors failed to obtain a building permit to allow them to perform these "improvements" and as such they are illegal City of *Oelwein v. Dvorsky*.

7. The City of Orange City, Iowa, assisted Loren J. Veldhuizen, the Sioux County Sheriff, the Clerk of Courts and the Third Judicial District in attempting to murder my husband, Harold O. Postma, the former county attorney, in order to cover up the perjury, bribes, theft, Mafia corruption and cattle fraud which Harold had discovered, some of which started to be revealed in the *U.S. v. Morken*, 133 F. 3d 628 (8th Cir. 1998) cattle fraud case based in Sioux County, Iowa, and Harold has now assisted in recovering the documents for $7.4 million of the missing millions.

8. It is becoming common knowledge in Northwest Iowa that this illegal seizure of my property is being done to:

a) obstruct justice,

b) "run us out" of Iowa

c) prevent my husband from having the merits of any matters involving him from being heard and therefore, although he legally had possession of the building and as my spouse had a legal interest in this

property, he was never included in order to assist in "streamlining" the illegal seizure of this property (See Exhibit H).

9. Every order and judgment from the inception of the matter, known as "The City of Orange City, Iowa, vs. Lot 10 and the East 10 feet of Lot 9, Block 15, Orange City, Sioux County, Iowa, Greta K. Postma, owner, in #OTCV018666, through September, 1998, was obtained without due process, without service of notice and thus Ex Parte by Loren J. Veldhuizen and are thus VOID although on October 30, 1997, I served a copy of a Motion to Dismiss on 1) the City of Orange City, Iowa, and 2) Loren J. Veldhuizen and both copies were received and file stamped in their offices on October 31, 1997.

FURTHER AFFIANT SAYETH NOT.

S/ Greta K. Postma

Subscribed and sworn to before me by Greta K. Postma on this 26th day of June, 2000, at Clara City, MN.

S/Yvonne Gerdes
Notary Public, Chippewa Co., MN

EXHIBIT A
AFFIDAVIT OF JONATHAN M. POSTMA

1. I, Jonathan M. Postma, am the son of Greta K. Postma.

2. In May of 1997, I was a sophomore at Dordt College, Sioux Center, Iowa. I was a former editor of the college newspaper known as the *Diamond*. For two summers I was employed by Marcus Construction of Prinsburg, MN pouring cement and other construction tasks.

3. In the first week of May, 1997, I took time off from studying for final exams and went to the Cambier Building which is the subject of this lawsuit. I repaired several holes in the sidewalk and, with the assistance of Gene Koning of Orange City, Iowa, boarded up the windows of the Cambier Building along Central Avenue. Windows along the alley in the rear of the building were also boarded up. On these windows several 8" X 10" panes of glass were broken or missing. These repairs were done to take care of the "safety" concerns of the City of Orange City.

4. Upon completion of my work, the windows and sidewalk posed no threat to the safety of pedestrians.

FURTHER AFFIANT SAYETH NOT.

S/ Jonathan Postma

Subscribed and sworn to before me by Jonathan M. Postma on this 27th day of May, 2000 at MN

S/Kristie Reverman
NOTARY PUBLIC

EXHIBIT B

MEMORANDUM

TO: City of Orange City
FROM: Roy, Marshall, State Fire Marshall
DATE: December 7, 1995
SUBJECT: Building at 103 3rd Street NW, Orange City

As per a request from the City of Orange City, an inspection of a building housing a former car dealership at the above location was performed on November 15, 1995. Inspector Terry Johnson of this office photographed the structure and wrote notes pertaining to its condition. Copies of the notes are attached. Because he was unable to secure consent to enter the building, the interior was inspected only in a manner permitted by looking through broken windows.

You will note that he concluded by writing that "if the chimneys were repaired the building is in overall sound construction."

We are retaining the photographs and the original notes for our file.

rlm

EXHIBIT D

Excerpt from
Society of Architectural Historians
Buildings of Iowa
Page 490

Orange City

Named for Prince William of Orange, the town was established as a predominantly Dutch colony in 1869. The community celebrates its Dutch heritage through pageants, extensive gardens of tulips, and of necessity, numerous windmills.

MW093 Cambier Brothers Garage Building

1919, Beuttler and ArnolD, 103 3rd St

This single-story garage building is part pure industrial, part Prairie style and part Beaux-Arts. A suggestion of the Prairie style lies in the inverted triangular ornament projecting above the parapet of the roof, while an entrance surmounted by a classical pediment leads into the showroom of the building. In front of the building is a tile-roofed canopy that provides shelter for the pump area

EXHIBIT E
Promotional Brochure for 'Dutch Fronts'

An outlook that pays

Nothing sells like a theme-people want to make shopping an adventure. The Dutch fronts program is designed to make that adventure come true in Orange City. Your business will be the benefactor.

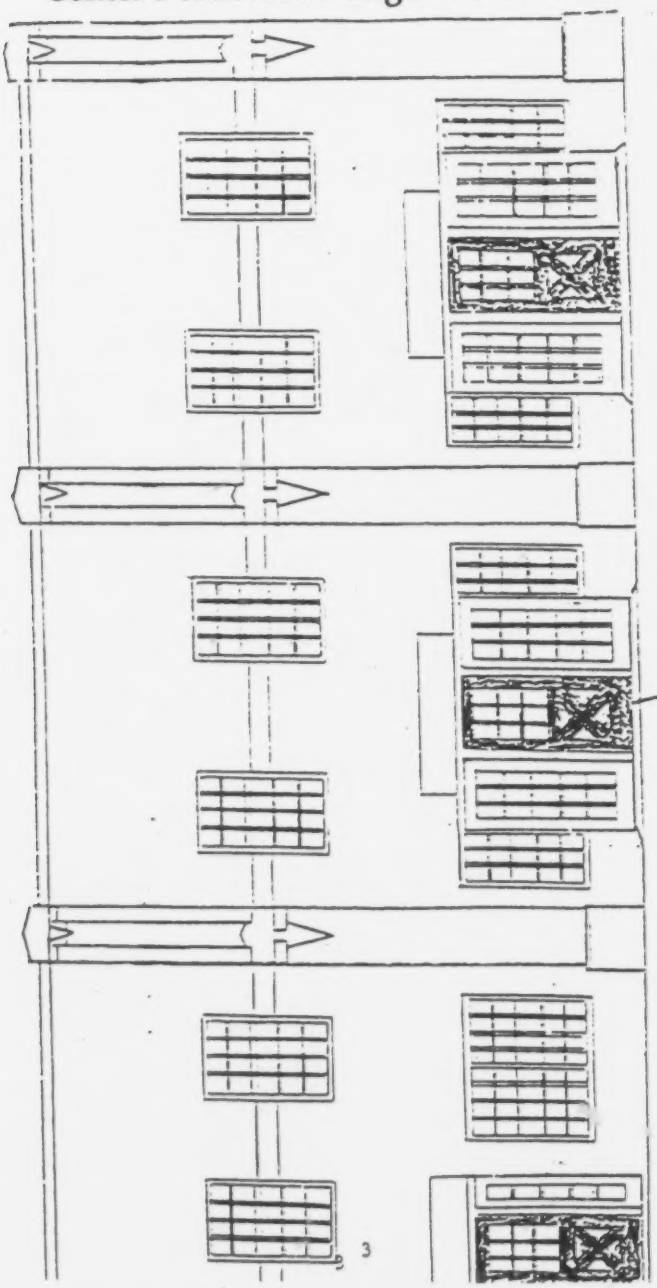
By renovating your storefront to follow a Dutch village theme, you could be eligible for up to 50 percent reimbursement to a maximum of $10,000. A city ordinance backs this concept on all new commercial construction. The city is convinced enough of the benefits of this program to provide incentive money.

An architect has been retained to help redesign your storefront in an authentic yet practical fashion. Those changes will cost less than you expect and repay you in increased customer traffic for years to come. To work will, there must e enough participation to make an impact on visitors.

We invite you to learn more about the program and application for the Dutch fronts renovation from the Orange City Hall. 737-4885.

EXHIBIT F

Center Portion of Design © 1989 Greta K. Postma



BEST AVAILABLE COPY

EXHIBIT G

ZONING PERMIT
City of Orange City

GRETA K. POSTMA
(Applicant)

Application No._____
Zoning District _____
Date Received _____

Approved_____Rejected_____
(Date) (Date)

Alter & Renovate Building East 10' Lot 9 & Lot 10

Block 15, Original Plat $200,000 approx. cost

"Issuance of this permit does not deny the applicanct to apply for "Dutch Front"

Approved_____ Rejected_____ _____
(Date)

_____
(Enforcement Officer)

s/ Greta K. Postma
(Applicant)

EXHIBIT H

MEMORANDUM
CITY OF ORANGE CITY
February 13, 1992

EXCERPTS

TO CITY COUNCIL AND MANAGEMENT
RE: ACQUISITION OF DOWNTOWN RETAIL BUILDINGS

Question: Issue has been raised asking "if" and "how" the City might gain control or ownership of **prime location retail space** located downtown. Review of statutes and case law yields this analysis:

A. Condemnation - [have to pay market value]

B. Tax Sale - [scavenger list after three years]

C. Public Nuisances [controlled by statute - must be tangible injury] "aesthetic objections, offense to community tastes or community disapproval are not sufficient to establish a nuisance."

As we review the question of what role the City may play in acquiring control or ownership of **prime location retail space** downtown we must find if we follow the nuisance approach, that there has been a measurable "injury" to specific individuals or the public generally. Lack of opportunity and "priced out of the market" are not sufficient. Condemnation seems like a long shot in view of the need to actually take over and develop the property as a City project.

Loren Veldhuizen
Attorney at Law [City Attorney]

[Emphasis added above]

AFFIDAVIT
OF TENANT, HARLAN ROUSE

STATE OF IOWA)
SS:
COUNTY OF SIOUX)

I, HARLAN ROUSE, having been duly sworn on oath, depose and state as follows:

1. That I am a resident of Hospers, Sioux County, Iowa, where I have served multiple terms as Mayor.

2. That I, along with my wife, Katie, are the owners of the Siouxland Press, formerly known as the Hospers Press, with offices located in Orange City, Iowa, as well as Hospers, Iowa.

3. In Orange City, Iowa, our office was located in the Cambier Building owned by Greta K. Postma which is the subject of this litigation (Lot 10 and the East 10feet of Lot 9, Block 15, Original Plat, Orange City, Iowa) and we paid her a monthly rent of $100.

4. In 1989 I was in the law offices of Loren J. Veldhuizen of Orange City, Iowa, it was discussed casually that the city of Orange City, Iowa, was trying to take over this building.

5. We rented space in the Klay, Veldhuizen Law Offices building and paid them $150 per month as a monthly rental; we vacated the space which we rented from Greta K. Postma and have paid her no further rent.

6. While renting from Greta we did not experience any problems other than the usual and ordinary expected problems. During our tenancy a central heating and cooling system was installed in

the building and other major steps were taken to update and rehabilitate the building.

7. IT IS COMMON KNOWLEDGE IN ORANGE CITY, IOWA, that when the City of Orange City, Iowa, boarded up the windows of the Cambier Building that they did so by obtaining bids for the materials and told the contractor to take the **higher** [Emphasis added] bid because it was from the lumberyard located in Orange City, Iowa, and the city would not ultimately pay for it anyway.

FURTHER AFFIANT SAYETH NOT

S/ Harlan E. Rouse

Subscribed and sworn to before me on this 26th day of August, 2000.

S/ Greg Hansen
Notary Public

PARTIAL TRANSCRIPT FROM HEARING
ON AUGUST 28, 2000

MS. POSTMA: Well, if Mr. Veldhuizen had not lied to Judge Nelson that the - - you know, then this probably would never have gone on.

And Mr. Veldhuizen, if you did not lie at that time, this is your opportunity to say that you did not lie.

THE COURT: Well, Mrs. Postma, I'm not going to take up that motion, because that motion [to dismiss] is in part of the file, which apparently is in the supreme court. It certainly is a motion that was filed before the appeal to the supreme court. And . . . . . I'm not going into that. So - -

Now, let's go to - -

MS. POSTMA: I just want to make a record that I cannot get a ruling, Judge. Thank you. [Emphasis added].

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
Filed October 29, 1997
Francis E. Doskal, Clerk

CITY OF ORANGE CITY, IOWA,

No. 97-2398

V.

LOT 10 AND THE EAST 10 FEET OF LOT 9, BLOCK 15, ORIGINAL PLAT, ORANGE CITY, SIOUX COUNTY, IOWA, GRETA K. POSTMA, Owner of Record

---

COMES NOW, Greta K. Postma, and for her MOTION TO DISMISS respectfully states to the court:

1. The lawsuit fails to contain any type of Summons or Original Notice as required by the Rules of Civil Procedure; no summons or Original Notice has been served upon Greta K. Postma.

2. The City of Orange City seeks to invoke penalties pursuant to its purported police powers emanating from an ordinance which it passed only in June, 1997. The City is thus invoking an Ex Post Facto law (the lawsuit includes attachments indicating that the alleged conditions existed already in 1994) which is unconstitutional under the United States Constitution.

3. The City of Orange City, Iowa, its officers and its attorney, Loren J. Veldhuizen, have illegally invoked a Bill of Attainder to seize the property of Greta K. Postma, without due process; this purported lawsuit is a continuation of such unconstitutional efforts to finalize the illegal seizure of such property which has already occurred.

4. The filing of this lawsuit is barred by the failure of the City of Orange City, Iowa, to file any counterclaim or to otherwise present or preserve its alleged claims in prior litigation between these same parties; the doctrines of issue preclusion, claim preclusion and res judicata are an absolute bar to this litigation.

WHEREFORE, the Defendant, Greta K. Postma moves this court to dismiss this action and to tax the costs to the City of Orange City, Iowa.

S/ Greta K. Postma

Certificate of Service attached
Dated October 29, 1997

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

CITY OF ORANGE CITY, IOWA,
Plaintiff, 3-97 CIV 2398
v.

LOT 10 AND THE EAST 10 FEET OF LOT 9, BLOCK 15, ORIGINAL PLAT, ORANGE CITY, SIOUX COUNTY, IOWA, and GRETA K. POSTMA, Owner of record,
Defendant.

ORDER

On September 15, 1997, the plaintiff filed a complaint in the Iowa District Court for Sioux County. On October, 1997, defendant Greta K. Postma filed a notice to remove the complaint to the United States District Court for the District of Minnesota. The statute governing removal of actions from state to federal court provides:

> the United States district court in which such notice [for removal] is filed shall examine the notice promptly. If it clearly appears on the face of the notice, and any exhibits annexed thereto that removal should not be permitted, the court make an order for summary remand.

The Court has reviewed this action and finds it has been improperly removed to the United States District Court for the District of Minnesota. 28 U.S.C. § 1446(a) provides that "a defendant or defendants desiring to remove any civil action or criminal prosecution from a

State court shall file in the district court of the United States for the district and division within which such action is pending . . . " Thus 28 U.S.C. § 1446 requires that this Court summarily remand the action to Iowa State Court. However, the Court will order that the clerk of court refund any filing fees incurred by Defendant.

Accordingly, upon review of the files and record herein, IT IS HEREBY ORDERED That:

1. This action, **including any pending motions,** is remanded to the Iowa District Court for Sioux County pursuant to 28 U.S.C. § 1446 (c)(4);

2. The clerk of court for the United States District Court for the District of Minnesota shall refund to defendant Greta K. Postma all filing fees related to defendant's petition for removal; and

3. Copies of this order shall be sent to the clerk of the Iowa District Court for Sioux County, defendant Greta K. Postma, and Loren J. Veldhuizen, City Attorney for plaintiff City of Orange City, Iowa.

November 4, 1997
Filed Nov 04, 1997
Francis E. Dosal, clerk

S/ Donald D. Alsop
Senior Judge
U. S. District Court